

EXHIBIT 71

Picard v. Merkin

D. Seymour 1-13-15

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF DON M. SEYMOUR, as
taken by and before Nancy C. Bendish, Certified
Court Reporter, RMR, CRR, Realtime Systems
Administrator and Notary Public of the State of
New York, at the offices of HSM CHAMBERS,
Buckingham Square, 720 West Bay Road, Grand
Cayman, Cayman Islands, on Tuesday, January 13,
2015, commencing at 10:09 a.m.

10:46:44 1 you mean?

10:46:45 2 Q. We can pull an article, but I
10:46:47 3 recall reading a Financial Times article
10:46:50 4 recently that you were quoted saying that you
10:46:52 5 use computer systems to help you with your
10:46:54 6 services. Do you use computer systems to help
10:46:58 7 you with your directorship services?

10:47:01 8 A. Okay, yeah. That wasn't the
10:47:02 9 question you asked.

10:47:03 10 Q. Okay. I'll withdraw the previous
10:47:04 11 question.

10:47:05 12 Do you use computer systems to
10:47:07 13 help you with your director services?

10:47:09 14 A. Yes, we do.

10:47:10 15 Q. Just generally describe those
10:47:12 16 systems to me.

10:47:14 17 A. We use a system called DMS
10:47:17 18 Tracker.

10:47:18 19 Q. And what is DMS Tracker?

10:47:21 20 A. It's a practice management system.
10:47:25 21 It tracks all of our interactions with the funds
10:47:28 22 and their service providers.

10:47:49 23 Q. Prior to December 2008 had you
10:47:56 24 ever heard of Bernard L. Madoff?

10:47:58 25 A. No.

10:47:59 1 Q. Do you recall when you first heard
10:48:00 2 about Mr. Madoff?

10:48:01 3 A. In December of 2008.

10:48:03 4 Q. And how did you first hear about
10:48:05 5 Mr. Madoff?

10:48:06 6 A. In the press when the scheme was
10:48:11 7 revealed.

10:48:41 8 Q. Do you now have an understanding
10:48:42 9 that BLMIS purportedly ran an investment
10:48:46 10 advisory business and a separate broker-dealer
10:48:50 11 market-making business?

10:48:53 12 MR. STEINER: Objection to form.

10:48:54 13 A. Yes, I have that understanding.

10:49:00 14 Q. And what was the basis of your
10:49:01 15 understanding?

10:49:03 16 MR. SIEV: I just want to caution
10:49:05 17 you in this question and other questions that
10:49:09 18 may deal with interactions after you learned of
10:49:13 19 the Madoff Ponzi scheme. Just think about
10:49:18 20 whether your answers are based on communications
10:49:21 21 with counsel and, if so, you can state that fact
10:49:25 22 and if we need to we'll take a break. But
10:49:28 23 otherwise if you read it in the paper, for
10:49:30 24 example, obviously feel free to answer. I just
10:49:32 25 want you to think about -- because I assume he's

10:50:50 1 Mr. Ezra Merkin?

10:50:54 2 A. No. I'm aware of him, yes.

10:51:00 3 Q. And when did you first -- or have
10:51:02 4 you ever met Mr. Merkin?

10:51:05 5 A. I've since met -- well, yes, I
10:51:07 6 have met him.

10:51:08 7 Q. And when did you first meet
10:51:10 8 Mr. Merkin?

10:51:14 9 A. I think it was sometime in 2009.

10:51:18 10 Q. And prior to meeting him in 2009,
10:51:23 11 when did you first hear about Mr. Merkin?

10:51:30 12 A. Well, Mr. Merkin was described in
10:51:34 13 the constitutive documents of the Ascot and the
10:51:39 14 Ariel Fund as the general partner, so I was
10:51:42 15 aware of his role with the funds.

10:51:52 16 Q. Okay. And have you ever heard of
10:51:55 17 GCC?

10:51:57 18 A. Yes, in a similar vein.

10:52:02 19 Q. Did you ever meet with anybody
10:52:05 20 else from Mr. Merkin's office?

10:52:08 21 A. Mr. Mike Autera.

10:52:10 22 Q. And when did you meet Mr. Autera?

10:52:13 23 A. I don't recall.

10:52:23 24 Q. Did you ever visit Mr. Merkin's
10:52:25 25 office?

Picard v. Merkin

D. Seymour 1-13-15

39

10:52:26 1

A. Yes.

10:52:27 2

Q. When?

10:52:30 3

A. At the time I met him.

10:52:33 4

Q. Around 2009?

10:52:35 5

A. Around 2009.

10:52:36 6

Q. Okay. And you said you don't

10:52:38 7

recall when you last met Mr. Autera. Did you

10:52:41 8

meet Mr. Autera in person?

10:52:49 9

A. I don't recall when I met Mike for

10:52:54 10

the first time.

10:52:55 11

Q. But have you ever met him in

10:52:57 12

person?

10:52:58 13

A. Yes, I have. I don't recall when.

10:53:00 14

Q. Was it prior to 2008?

10:53:03 15

A. I don't recall.

10:53:19 16

Q. Do you recall how many times you

10:53:20 17

would have met with Mr. Autera?

10:53:23 18

A. No, I don't recall.

10:53:31 19

Q. How did you specifically come to

10:53:33 20

join the board of Ascot Fund?

10:53:38 21

A. I was referred by Fortis, who was

10:53:47 22

the registering transfer agent.

10:53:50 23

Q. When was this?

10:53:53 24

A. This was in 2001.

10:54:02 25

Q. And do you remember who at Fortis

11:49:08 1 Q. Do you recognize these documents?

11:49:11 2 A. Yes. These are invoices from DMS
11:49:17 3 Management to Ascot Fund Limited.

11:49:19 4 Q. Okay.

11:49:20 5 A. As of 2009.

11:49:24 6 Q. And if we look at the second one,
11:49:27 7 Exhibit 332, is that your annual director fee,
11:49:30 8 7,500?

11:49:32 9 A. Yes.

11:49:50 10 Q. And the first one is dated
11:49:57 11 September 29, 2008 through May 18, 2009; is that
11:50:01 12 correct?

11:50:02 13 A. Yes.

11:50:03 14 Q. And the fee is \$3,240?

11:50:08 15 A. Yes.

11:50:09 16 Q. And it says for services rendered;
11:50:12 17 is that correct?

11:50:13 18 A. Yes.

11:50:13 19 Q. Do you recall what services were
11:50:14 20 rendered?

11:50:18 21 A. This is likely what we call an
11:50:19 22 extraordinary invoice. If there was time or
11:50:27 23 circumstances that were beyond our usual service
11:50:32 24 level expectation.

11:50:34 25 Q. And what would those -- so did you

12:13:23 1 record.

12:13:52 2 Q. And to your knowledge did Ascot
12:13:54 3 Partners ever actually invest in any of these
12:13:59 4 strategies?

12:14:00 5 A. I have no governance
12:14:01 6 responsibility over Ascot Partners.

12:14:04 7 Q. Okay. That's not -- my question
12:14:08 8 was --

12:14:09 9 A. Well, how can I know anything
12:14:11 10 about something I have no responsibility for?

12:14:16 11 Q. Okay. So -- you say you had no
12:14:20 12 responsibility for. What do you mean?

12:14:25 13 MR. SIEV: Objection to the form.

12:14:27 14 A. You're familiar with the way the
12:14:28 15 master feeder structure works?

12:14:31 16 Q. Please explain it to me.

12:14:36 17 A. The governance of the master is by
12:14:39 18 the general partner. I was not the general
12:14:42 19 partner of Ascot Partners. I was a director of
12:14:48 20 Ascot Fund. The fund invests in the general
12:14:54 21 partner, of which I have no responsibility for.
12:14:59 22 And that was under the complete discretion of
12:15:02 23 Mr. Merkin, as the general partner.

12:15:06 24 So you're asking me about
12:15:08 25 something of which I have no knowledge about --

12:36:28 1 statements, which I think was your specific
12:36:30 2 question.

12:36:30 3 Q. And paragraph 92? Who had the
12:36:43 4 ability to remove a director from office?

12:36:50 5 A. The voting shares of this fund was
12:36:52 6 held by the general partner and that was
12:36:55 7 Mr. Merkin in this case. And the voting shares
12:36:57 8 actually controlled the fund, including the
12:37:04 9 board.

12:37:05 10 Q. And so who had the ability to
12:37:09 11 appoint any directors, paragraph 93?

12:37:17 12 MR. STEINER: Objection to form.

12:37:18 13 A. Well, this is as it's stated here.
12:37:21 14 So it says that the company may by -- the
12:37:25 15 company may, by a resolution, appoint a person.
12:37:34 16 So it's plain.

12:37:35 17 Q. And who had the voting shares of
12:37:36 18 the company?

12:37:37 19 A. The voting shares were held by
12:37:38 20 Mr. Merkin.

12:37:42 21 Q. Can you look at paragraph 99,
12:38:12 22 please.

12:38:25 23 A. Okay.

12:38:26 24 Q. Did the directors at any time
12:38:28 25 elect or remove a chairman?

12:43:34 1 Can you look at paragraph 122.

12:44:11 2 A. Okay.

12:44:12 3 Q. Can you explain to me what steps
12:44:13 4 as director you took to ensure that Ascot Fund
12:44:18 5 kept proper books as it's stated here.

12:44:24 6 A. The fund would -- well, Gabriel
12:44:28 7 Capital Corporation was engaged to perform the
12:44:30 8 day-to-day accounting of the fund, and then
12:44:35 9 they -- those records were -- and also Fortis,
12:44:40 10 by the way, for the capital side for the
12:44:42 11 accounting and valuation and then the register
12:44:45 12 and transfer agency, and then those records were
12:44:48 13 audited on an annual basis by BDO.

12:45:00 14 Q. Did you ever review any of the
12:45:08 15 day-to-day accounting of the fund?

12:45:13 16 MR. SIEV: Objection to the form.

12:45:14 17 A. That's not the role of the board.

12:45:24 18 Q. How was Gabriel -- you stated that
12:45:27 19 Gabriel Capital Corporation was engaged to
12:45:29 20 perform the day-to-day accounting of the fund.
12:45:34 21 How were they engaged to do so?

12:45:36 22 A. I was part of, I recall the
12:45:40 23 investment advisory agreement that existed
12:45:43 24 before, in relation to Ascot. So that was one
12:45:48 25 of the services that they provided under that

12:45:51 1 agreement. And after that agreement ceased,
12:45:54 2 there was a limited partnership agreement and
12:45:59 3 they continued to provide basically the same
12:46:02 4 services under a different agreement.

12:46:36 5 MR. KRISHNA: Will the court
12:46:37 6 reporter please mark this as Trustee Exhibit
12:46:41 7 338.

12:46:57 8 (Exhibit Trustee 338 marked for
12:47:02 9 identification.)

12:47:03 10 Q. It's Bates stamped AF 26.

12:47:25 11 A. Do you want me to read it out
12:47:29 12 aloud? Just kidding.

12:47:47 13 Is there a particular section you
12:47:49 14 want me to look at?

12:47:50 15 Q. Just, do you recognize this
12:47:52 16 document?

12:47:53 17 A. Yeah. It's the confidential
12:47:56 18 offering memorandum for Ascot Fund Limited, and
12:48:00 19 it's as of October 2006.

12:48:02 20 Q. Okay. Were you involved in the
12:48:03 21 creation of this document?

12:48:05 22 A. No.

12:48:07 23 Q. Do you know why this offering
12:48:11 24 memorandum was updated?

12:48:14 25 A. I don't recall.

12:52:40 1

A. I don't.

12:53:35 2

MR. KRISHNA: If we can go off the

12:53:37 3

record.

12:53:37 4

THE VIDEOGRAPHER: Off the record,

12:53:40 5

12:53.

12:53:56 6

(Luncheon recess taken.)

01:59:35 7

THE VIDEOGRAPHER: We're back on,

01:59:42 8

1:59.

01:59:44 9

BY MR. KRISHNA:

01:59:45 10

Q. Mr. Seymour, are you aware that

01:59:47 11

Ascot Fund maintained an account at BLMIS when

01:59:50 12

you joined the board in 2001?

01:59:52 13

A. I was not aware.

01:59:54 14

Q. Are you aware that substantially

01:59:56 15

all of Ascot Fund's assets at that time were

01:59:59 16

invested with BLMIS?

02:00:02 17

MR. SIEV: Objection to the form.

02:00:04 18

A. I was not aware.

02:00:05 19

Q. Are you aware that Ascot Fund's

02:00:08 20

BLMIS account was closed after about a year

02:00:10 21

after you were appointed to the director in

02:00:13 22

2003?

02:00:14 23

A. I was not aware.

02:00:17 24

Q. Now we're going to shift to Ariel

02:00:20 25

Fund. How do you specifically -- how did you

02:08:49 1 MR. SIEV: Same objection.

02:08:51 2 A. I don't recall.

02:08:55 3 Q. If there were loans made by Ariel
02:08:58 4 Fund, would the board have to approve them?

02:09:02 5 MR. STEINER: Objection to form.

02:09:05 6 A. If the loans were legally binding
02:09:08 7 on Ariel Fund and no one else had been
02:09:11 8 authorized to, because in certain circumstances
02:09:16 9 the investment advisor or manager can be
02:09:19 10 delegated that responsibility to take decisions
02:09:25 11 on behalf of the fund. But in the absence of
02:09:27 12 that, then the Board of Directors would have
02:09:31 13 been responsible. However, I don't recall any
02:09:33 14 of those transactions.

02:09:40 15 Q. Who was the investment advisor for
02:09:43 16 Ariel Fund?

02:09:44 17 A. Investment advisor was Gabriel
02:09:48 18 Capital Corporation.

02:10:01 19 Q. Did you hold any board meetings on
02:10:03 20 behalf of Ariel Fund?

02:10:05 21 A. I don't recall. When? I don't
02:10:09 22 recall the board meetings.

02:10:11 23 Q. If you did hold board meetings,
02:10:13 24 would those meetings have been documented?

02:10:16 25 A. Formal board meetings would be

02:10:18 1 documented.

02:10:18 2 Q. In the form of meeting minutes?

02:10:20 3 A. In the form of minutes.

02:10:21 4 Q. And would those meeting minutes be
02:10:24 5 maintained in your files?

02:10:25 6 A. Yes, they would have been.

02:10:26 7 Q. And would those files have been
02:10:28 8 produced to counsel?

02:10:28 9 MR. SIEV: Wait, I'm sorry, Don,
02:10:30 10 did you finish your last answer?

02:10:33 11 A. Yeah. Although to be clear, the
02:10:36 12 minutes of the meeting are -- the responsibility
02:10:40 13 is with the registered office of the fund. And
02:10:43 14 to be clear, DMS did not maintain the registered
02:10:48 15 office of the fund. So it's likely we would
02:10:50 16 have had a copy, but the responsibility for
02:10:53 17 maintaining the minute book and the meetings are
02:10:57 18 with the -- and the minutes, are with the
02:11:00 19 registered office. Yes, and those should have
02:11:03 20 been produced to you.

02:11:05 21 Q. Did you have any informal board
02:11:07 22 meetings?

02:11:09 23 MR. SIEV: Objection to the form.

02:11:13 24 A. Well, we may have had informal
02:11:15 25 meetings. There's really not a -- can't really

02:11:22 1 have an informal board meeting. You may have an
02:11:25 2 informal meeting, but I don't recall the
02:11:29 3 particular meetings of the fund.

02:11:50 4 Q. Who was Ariel Fund's auditor?

02:11:54 5 A. The auditor was BDO.

02:11:56 6 Q. And who was Ascot Fund's auditor?

02:11:59 7 A. Auditor was BDO.

02:12:02 8 Q. Do you recall when BDO was first
02:12:06 9 retained for Ariel Fund?

02:12:08 10 A. I don't recall.

02:12:11 11 Q. Do you recall when they were first
02:12:14 12 retained for Ascot Fund?

02:12:16 13 A. I don't recall.

02:12:17 14 MR. KRISHNA: I'd like the court
02:12:19 15 reporter to please mark this as Trustee Exhibit
02:12:27 16 346. It's Bates stamped -- I'm sorry. 340.
02:12:29 17 It's Bates stamped AF 472.

02:12:41 18 (Exhibit Trustee 340 marked for
02:12:50 19 identification.)

02:13:02 20 A. Okay.

02:13:03 21 Q. Do you recognize this document?

02:13:04 22 A. This document is an agreement to
02:13:07 23 provide services from BDO to the Ascot Fund
02:13:12 24 Limited as of January 4th, 2007.

02:13:15 25 Q. And is that your signature on the

03:16:53 1 MR. KRISHNA: Objection to the
03:16:54 2 form.

03:16:55 3 MR. SIEV: Objection to form.

03:16:55 4 A. Could you elaborate on that a
03:16:58 5 little more, Neil?

03:16:58 6 Q. Sure. You're aware that
03:16:59 7 liquidators could enter into agreements with
03:17:02 8 GCC, correct?

03:17:02 9 MR. KRISHNA: Object to form.

03:17:04 10 MR. SIEV: Objection.

03:17:04 11 A. Yes.

03:17:05 12 Q. And you don't know one way or the
03:17:06 13 other whether the liquidators have any such
03:17:08 14 agreements with GCC?

03:17:10 15 MR. KRISHNA: Object to form.

03:17:12 16 A. I would not.

03:17:13 17 Q. What was that?

03:17:14 18 A. I would not know.

03:17:16 19 MR. STEINER: Okay. No further
03:17:17 20 questions.

03:17:18 21 MR. KRISHNA: Thank you very much.
03:17:20 22 Appreciate your time today.

03:17:22 23 THE VIDEOGRAPHER: Off the record
03:17:24 24 at 3:17.

03:17:30 25 (Deposition concluded.)